

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

RESPONDENT:

ERIN PITKIN
1320 North 200 East, Apt.222
Logan, UT 84341

License Pending

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2015-096-PC
Enf. Case No. 3654

Mark E. Kleinfeld,
Presiding Officer

STATEMENT OF THE CASE

THIS MATTER concerning whether the Respondent's application for an individual resident producer license should be denied came on to be heard before the Commissioner of the Utah State Insurance Department ("Department") on Thursday, September 17, 2015 at 1:00 o'clock P. M. Mountain Time, with Mark E. Kleinfeld, Administrative Law Judge, serving as designated Presiding Officer.

Said hearing being held at the Department's offices located at the Utah State Office Building, Alta Conference Room, Salt Lake City, Utah 84114, having been convened at the designated time of 1:00 (1:07) P. M., September 17, 2015 and adjourned at 1:42 P. M. on said same day.

Appearances:

Gary D. Josephson, Assistant Attorney General Attorney for Utah State Insurance Department, Salt Lake City, Utah 84114.

Erin Pitkin, Applicant, 1320 North 200 East, Apt. 222, Logan, Utah 84341 , pro se.

By the Presiding Officer:

Pursuant to a August 19, 2015 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on September 17, 2015 in the above-entitled proceeding. The Applicant was present at that time.

The hearing was convened and conducted as a **formal hearing** in accordance with Utah Code Ann. Sections 63G-4-204, 63G-4-205, 63G-4-206, 63G-4-207 and 63G-4-208 and Administrative Rule R590-160-6.

ISSUE, BURDEN and "STANDARD OF PROOF"

1. The basic issue in the present matter is:

a. Was Applicant's application for a resident producer's license improperly denied?

b. Has the Applicant presented sufficient evidence to show that the Department's denial was not justified on the record?

c. Has the Applicant presented sufficient evidence that would justify the reversal of such denial? (**SEE** Paragraph 2 under *DISCUSSION-ANALYSIS*.)

2. The "*burden of proof*" or "*burden of going forward*" as to the above issue(s) is on the Applicant.

3. As per Utah Administrative Code Rule, R590-160-5(10) as to the above and foregoing "issue(s)" or "question(s)" to be answered the "*standard of proof*" as to issues of fact as to both matters is to be proven by a "*preponderance of the evidence*".

Both the Department and the Applicant gave brief opening statements.

Thereafter, evidence was offered and received.

Witnesses:

SUMMARY OF THE EVIDENCE

For the Complainant Department:

Randall Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

For the Respondent:

Erin Pitkin, Applicant.

Both of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

Seven (7) exhibits, SEE file.

(Also taken administrative notice of as part of the Producer Licensing files were the Applicant's July 10, 2015 application (Exhibit No. 1); FBI records check, UCBI records check (Exhibit No. 7), the Department's July 30, 2015 letter of denial (Exhibit No. 2) and the Applicant's August 13, 2015 request for hearing (Exhibit No. 3).

(No objection being made which exhibits were accepted and entered.)

The Applicant offered the following exhibits:

None.

Argument followed.

The Presiding Officer being fully advised in the premises and taking administrative notice of the files and records of the Department, now enters his *Findings of Fact, Conclusions of Law, and Order*, on behalf of the Department:

FINDINGS OF FACT

I, find by a preponderance of the evidence, the following facts:

1. The Utah Insurance Department ("Department") is a governmental entity of the State of Utah. The Department as per Utah Code Ann. Section 31A-2-101 is empowered to administer the *Insurance Code*, Title 31A, Utah Code Ann., 1953, as amended.

2. The Applicant, Erin Pitkin:

a. is a resident of the State of Utah and maintains a present residence of 1320 North 200 East, Apt. 222, Logan, Utah 84341 ;

and

b. has not previously been nor is presently licensed by the Department as a resident “Producer” to conduct or be engaged in the insurance business in the State of Utah.

3. The Applicant on or about July 10, 2015 filed her application with the Department for issuance of a “*Resident Producer Indv.*” license. (SEE Administrative File.)

4. The Department on or about July 30, 2015 in writing denied Applicant's “application for a Utah resident producer individual license dated July 10, 2015” for the following reasons:

“UCA Section 31A-23a-111-5(b)(iv) – failure to pay a final judgment rendered against you in this state.

UCA 31A-23a-107 - failure to meet the character requirements for licensing.

UCA Section 31A-23a-111-5(b)(i) – unqualified for a license.”

(SEE Administrative File.)

5. That included in said denial were instructions informing Applicant of her right to an “*informal hearing*” if a timely request is made in writing within fifteen (15) days. (SEE Administrative File.)

6. The Applicant filed her “*request for hearing*” with the Department on August 13, 2015. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of an August 19, 2015 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Respondent at her referenced business address, this present hearing was set for September 17, 2015 at 1:00 P. M..

DISCUSSION-ANALYSIS

1. a. Both the Applicant and the Department in large measure while advocating somewhat different characterization or interpretation of the above referenced facts in substance concurred as to the basic *chronology* and core facts.

b. The record now being complete sets forth competent and credible evidence for the entry of the following analysis.

2. a.i. Applicant freely acknowledges her interaction with the judicial system in the State of Utah.

ii. Such being one (1) Class “B” misdemeanor “*Retail Theft*”, later reduced via a “402” motion to an infraction and two (2) civil debt collection matters.

b. The incident(s) are argued by the Applicant as having been as of the result of immaturity and “youthful”¹ indiscretion.

c. The primary criminal court case closed on January 9, 2015 with the reduction coming on July 1, 2015.

d.. The civil matters are a December 18, 2013 \$2,941.64 default judgment and an April 21, 2015 \$651.11 default judgment.

e.i. The present Hearing Officer in contemplating the granting of a conditional license does not minimize either the criminal proceeding nor the civil matters.

ii. It is the recentness of all three (3) matters that gives great concern. All are less than three (3) years old from either the incident and or resolution date. All are clearly less than five (5) years ago which is the typical standard that has been utilized in the past as to entertaining the granting of probation. Arguably the retail theft may be non-tangential to an Applicant’s ability to perform in the insurance-financial world.

f.i. All of the above having been said and done to continue to penalize Applicant *carte blanche* would seem to be an arguable injustice. The Applicant’s criminal offense in large measure was “dismissed” and Applicant has moved on in her life.

ii. The civil financial matters bespeak more to responsibility and the failure to live up to such are in some sense tangential to the business of insurance. Both were default judgments. Although the record shows some payments on the judgments, although arguably begrudgingly via garnishment and or execution.

¹ The Applicant’s date of birth is July 29, 1985. While chronologically presently over 30 the facts in the respective criminal and civil matters in the Applicant’s background point to questions of immaturity. The Applicant at the hearing presented herself as making strides to overcome her past immaturity.

3. The Applicant absent the circumstances set forth in Paragraph 2, immediately above, does not appear to have had any other criminal record.

4. a. From the docket it appears all fines and fees and obligation have been resolved with the North Logan Justice Court. The matter of past criminal involvement can clearly be called minor and arguably an aberration and more than likely, although not guaranteed, not to be repeated.

b. It is the civil matters and apparent still outstanding judgments that gives substantial concern. The court dockets appear to show a couple of payments and extensions for payment in both matters being granted and the Hearing Officer cannot quite in his mind confirm the matters having been closed by the respective courts.

c. Again while not minimizing the same Hearing Officer feels the Applicant will comport her future actions in a sensible and directed manner **very carefully** from now on.

5. The Hearing Officer based on the whole record before him believes giving the Applicant the benefit of her apparent sincerity is in the best interests of justice. The Hearing Officer feels the Applicant will not abuse that benefit and belief.²

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and discussion-analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Department's "*letter of denial*" under date of July 30, 2015 should while sustained be modified.

2. The Applicant's July 10, 2015 application for licensure as a "*Resident Producer Indv.*" should be granted conditionally.

² Should the Department be made aware of a re-occurrence of such *naivete* in **any** manner, shape or form the herein granted probationary license to be revoked immediately forthwith.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW

the Presiding Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:

1. The Department's "*letter of denial*" under date of July 30, 2015 is **sustained**;
and
2. The Applicant's July 10, 2015 application for licensure as a resident "*Producer*" is **granted conditionally** on the following terms and conditions:
 - a. The Applicant providing written documentation of complete satisfaction and release from the respective civil court judgments as to outstanding civil judgments of \$2,941.64 as shown in Exhibit No.4 and \$651.11 as shown in Exhibit No. 6; and
 - b.. The Applicant's filing of a signed acknowledgment, acceptance and agreement to comply with the terms and conditions of the present order by an appropriate official of any present prospective employer approved by the Department;
 - c. With both of said requirements as set forth in Paragraph 2.a. and b., immediately above, to be accomplished within ninety (90) days of the date of this order or on or before December 31, 2015, whichever is lesser, or the Department's July 0, 2015 letter of denial is **affirmed** and the Applicant's July 10, 2015 application **denied**; and
 - d.i. The Applicant being placed on an eighteen (18) months term of probation during which she may only be employed by the present prospective company-employer; with any other employment in the insurance industry in Utah to be approved by the Department **in advance** via a similar signed acknowledgment by any prospective future employer; and
 - ii. Such license to issue and the eighteen (18) months probation with the Applicant to have no violations of the insurance laws of the State of Utah during her probation and to commence upon both filings as required by subparagraph 2a and b, above.

DATED and ENTERED this 5 day of October, 2015.

**TODD E. KISER,
INSURANCE COMMISSIONER**



MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE
and
PRESIDING OFFICER
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
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Facsimile: (801) 538-3829
Email: MKleinfeld@utah.gov

ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. Section 63G-4-301 and Administrative Rule R590-160-8.

Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(R590-160-8 and Section 63G-4-401)

JUDICIAL REVIEW

As an “**Formal Hearing**” after agency review judicial review of this Order may be obtained by filing a petition for such review consistent with Utah Code Ann. Section 63G-4-403.

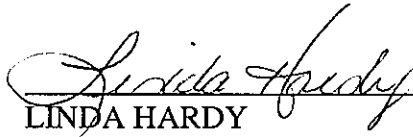
ADMINH.Pitkin.I/A.10-xx-15

CERTIFICATE OF MAILING

The undersigned certifies on this date, a true and correct copy of the forgoing ORDER ON HEARING was mailed, postage prepaid, to the following:

Erin Pitkin
1320 North 200 East, Apt. 222
Logan, UT 84341
&
ERIN.PURDIE.PITKIN@GMAIL.COM

DATED this 5th day of October, 2015


LINDA HARDY
UTAH INSURANCE DEPARTMENT
STATE OFFICE BUILDING, ROOM 3110
SALT LAKE CITY, UT 84114-6901